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IN THE SUPREME COURT OF THE UNITED STATES

WHITE TOOL AND MACHINE COMPANY
Petitioner

-VS-

COMMISSIONER OF INTERNAL REVENUE
Respondent

COA NO.
81-1162

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH COURT

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PETITION FOR WRIT OF CERTIORARI

This is a Petition for Certiorari from a United States court of appeals, 6th Circuit, decision dated May 5, 1982, said matter having been appealed from a decision of the United States tax court that was served September 30, 1980.

The United States Supreme Court has jurisdiction to entertain this Petition pursuant to the terms of Title 28 United States Code section 1254.

The issues involved are as follows.

ISSUE I-A

WHEN DOES THE COMMISSIONER OF INTERNAL REVENUE HAVE THE AUTHORITY TO INVOKE THE POWERS GRANTED TO HIM BY TITLE 26, SECTION 482, U.S.C.?

Appellant says—That the commissioner may only invoke the powers granted to him by Title 26, Section 482 U.S.C. when it is necessary in order to prevent evasion of taxes or clearly to reflect the income of the taxpayer.

ISSUE I-B

IN A SITUATION WHERE A CORPORATION RENTS IT'S PERSONAL PROPERTY TO A RELATED CORPORATION (e.g. BROTHER-SISTER CORPORATIONS) AND THE RENTAL AGREEMENT REQUIRES THE OWNER CORPORATION TO PROVIDE SERVICES TO THE RENTOR, MAY THE COSTS OF THOSE SERVICES LEGITIMATELY BE INCLUDED IN THE RENT?

Petitioner says: "Yes."

Respondent says: "No."

ISSUE II

IN DETERMINING WHETHER OR NOT THE FAIR MARKET RENTAL VALUE OF EQUIPMENT RENTED BETWEEN BROTHER-SISTER CORPORATIONS HAS BEEN EXCEEDED, IS AN ARREARAGE OF RENT FROM A PRIOR TAXABLE YEAR, THAT IS PAID DURING A SUBSEQUENT TAXABLE YEAR, ATTRIBUTABLE TO THE YEAR IN WHICH IT IS PAID, OR THE YEAR IN WHICH IT IS INCURRED.

Plaintiff-Appellant says: The year in which it is incurred.

Respondent-Appellee says: The year in which it is paid.

This Petition involves the application of a United States Statute—Title 26, Section 482 United States Code, as follows:

§482. Allocation of income and deductions among taxpayers

In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Secretary may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses.

Aug. 16, 1954, c. 736, 68A Stat. 162; Oct. 4, 1976, Pub.L. 94-455, Title XIX, § 1906(b)(13)(A), 90 Stat. 1834.

The decision of the United States Court of Appeals for the Sixth Circuit is in conflict with decisions of other courts of appeals and this Court on the same matter, in that this Opinion permits the Commissioner of Internal Revenue to

invoke the provisions of Title 26, Section 482 United States Code, without a showing that it is necessary to do so to prevent evasion of taxes or clearly reflect the income of the Respondent corporations.

See: *ACH* vs. *Commissioner*, 358 F2d 342 (5th Circuit).

South Texas Rice Wharehouse Co vs. *Commissioner*, 366 F2d 890 (5th Cir.).

C.I.R. vs. *First Sec. Bank of Utah*, 92 S.C. 1085, 405 U.S. 394, 31 L. Ed. 318.

Bank of Minneapolis vs. *U.S.* - C.A. Minn 1977 556 F.2d 889.

Advance Machinery Exchange vs. *C.I.R.*, C.A. 2 1952 196 F.2d 1006.

Young and Rubicam vs. *U.S.*, 410 F2d 1233.

Rubin vs. *Commissioner*, 429 F2d 650 (2nd Circuit).

National Securities Corp. vs. *CIR*, 137 F2d 600 (3rd Circuit).

Aiken Drive-in Theatre Corp. vs. *U.S.*, 281 Fed 2d7 (New York).

The decisions of the other circuits clearly state that the purpose of Title 26, Section 482 is to prevent the evasion or minimizing of taxes by controlled taxpayers, here it is agreed by both parties that there was no evasion or minimizing of taxes.

There is no shifting of anything, there is absolutely no distortion of the taxpayer's taxes because that is admitted by Respondent-Appellee's auditor (Tr 33-52), Respondents stipulations (Tr 157-158) and Respondent-Appellee's Exhibit B-A and B-H (Appendix Page 123-124).

The following discussion on Page 157 of the trial transcript clearly demonstrated that the consolidated return fi-

gures came out essentially the same as the individual figures when they are correlated. This simply stated means that if there had been only one corporation, the end result would have been essentially the same as it was by the use of the three corporations:

> "MR. RITTER: Your Honor, we further have a stipulation as to Respondent's Exhibit BA, marked for identification and Respondent's Exhibit BH marked for identification. Those are the respondent's reconciliation of individual, corporate tax liabilities to consolidated returns that were filed for the corporations involved, White Tool and Machine Company, White and Sons Rental, and White Charter Services, Inc. I think Mr. O'Connell has stipulated that these do reconcile and these documents reflect an accurate portrayal of those returns and the reconciliation.
>
> MR. O'CONNELL: Your Honor, he probably said exactly what I did. But just to be sure that I understand it, *the accurate figures indicate that the consolidated return figures come out essentially the same as the individual figures when they're correlated. And that's essentially the stipulation, as well as the admission of the documents.*
>
> THE COURT: And as I understand it, the exhibits eliminate, or have a column which eliminates the intercompany transactions.
>
> MR. RITTER: *Well, yes, Your Honor.* There is a column entitled, difference, which, in the 1974 year, shows that the intercorporate transactions, when taken out, do reconcile to the corporate consolidated returns. (Underlining added for the purpose of emphasis.)

This makes it obvious that there was no distortion of income either attempted or accomplished.

The Commissioner has, contrary to the intent of Section 482 distorted the income of the corporations involved by refusing to allow a major expense involved in a lease between related corporations, that is wages paid by the lessor for the benefit of the lessee to be included in the fair rental value.

THE RESULT OF THE INVOCATION OF SECTION 482 BY THE COMMISSIONER WOULD NOT BE TO ALLEVIATE A DISTORTION OF THE INCOME BUT IT WOULD BE TO CREATE A DISTORTION OF THE INCOME OF THE CORPORATIONS. WHAT IT WOULD ACCOMPLISH IS TO ALLOCATE ALL OF THE EXPENSES FOR WAGES TO WHITE CHARTER, AND ALL OF THE INCOME TO WHITE TOOL, THEREBY GIVING WHITE CHARTER ALL OF THE DEDUCTIONS AND WHITE TOOL ALL OF THE INCOME, THAT IS REPRESENTED BY WAGES—CAUSING A HUGE TAX TO WHITE TOOL COMPLETELY DESTORTING THE ACTUAL TAXES OF THE CORPORATIONS. THE ALLOCATIONS BY THE IRS DO NOT REFLECT TRUE TAXABLE INCOME, THEY DISTORT IT. THE SECTION 482 ALLOCATION WAS THEREFORE ARBITRARY AND UNREASONABLE.

This is in conflict with the opinion of the other circuits as set forth above which require the Commissioner to consider all factors contributing to the lease into consideration in determining whether or not the Commissioner had the authority to invoke the powers authorized by Title 28, Section 482.

The issue of whether or not back rent for a prior year, paid by one brother-sister corporation to another, during a subsequent tax year should be treated as rent for the year in which it is incurred, or the year that it is paid, for the purpose of determining a fair rental value is one of major importance but one that has not been decided by the U.S. Supreme Court, or any other circuit, in fact although it was raised on appeal to the 6th circuit it was not encompassed in the Courts opinion.

WHEREFORE Petitioner-Appellant prays that this Honorable Supreme Court grant Certiorari and reverse the decision of the United States Tax Court as affirmed by the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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FOR PUBLICATION

NO. 81-1162
NO. 81-1169

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WHITE TOOL AND MACHINE COMPANY (81-1162)
Petitioner-Appellant

v.

COMMISSIONER OF INTERNAL REVENUE

BEFORE: LIVELY, KEITH and MERRITT, *Circuit Judges.*

ORDER
(Filed May 5, 1982)

The taxpayer, White Tool and Machine Company, has appealed from a decision of the United States Tax Court, and the Commissioner of Internal Revenue has filed a cross-appeal directed to one issue decided by the Tax Court. In this case deficiencies were assessed against White Tool and Machine Company for the years 1973 and 1974 on the basis of a reallocation of income and deductions among three corporations owned and controlled by the same group of individuals. *See* 26 U.S.C. §482. The shareholders in White Tool and Machine Company are also the only shareholders in White Charter Services, Inc. and White & Sons Rental, Inc. Pursuant to 26 U.S.C. §482 the Commissioner determined that the rents paid by White Tool and Machine Company to White & Sons Rental, Inc. and White Charter Services, Inc. for the use of equipment, vehicles and an airplane were excessive. The Commissioner also allocated interest income and deductions attributable to non-interest bearing promissory notes given by White & Sons Rental, Inc. to White Tool and Machine Company and by Stephen White to White & Sons Rental, Inc.

Upon consideration of the briefs and oral arguments of counsel together with the record on appeal this court concludes that the findings of fact made by the Tax Court are not clearly erroneous. Counsel for White Tool and Machine Company argued that if there had been a single corporation and the same payments had been made the net income of the three corporations would have been identical to that of the single corporation. However, separate corporations were established by the shareholders and, based on the factual findings of the Tax Court, the allocations made by the Commissioner were permitted by Section 482. Accordingly, we affirm the decision of the Tax Court on the appeal of White Tool and Machine Company.

The Commissioner appeals from the Tax Court's denial of his treatment of the rents allocated to White Tool and Machine Company under Section 482 as constructive dividends under 26 U.S.C. §§301 and 316 to three of the shareholders of White Tool and Machine Company. Upon review of the record this court concludes that the Tax Court was not required to treat these reallocated funds as constructive dividends, and accordingly, the decision of the Tax Court is affirmed upon cross-appeal.

ENTERED BY ORDER OF THE COURT

(s) JOHN P. HEHMAN
Clerk

ISSUED AS MANDATE: MAY 27, 1982
COSTS: NONE